

AMENDED IN ASSEMBLY AUGUST 21, 2006

AMENDED IN ASSEMBLY AUGUST 7, 2006

AMENDED IN ASSEMBLY JUNE 21, 2006

AMENDED IN SENATE MAY 26, 2006

AMENDED IN SENATE MAY 17, 2006

AMENDED IN SENATE APRIL 17, 2006

## SENATE BILL

**No. 1544**

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**Introduced by Senator Migden**  
(Coauthor: Assembly Member Goldberg)

February 23, 2006

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An act to add Section 806 to the Evidence Code and to add Section 686.3 to the Penal Code, relating to criminal investigations.

### LEGISLATIVE COUNSEL'S DIGEST

SB 1544, as amended, Migden. Criminal investigations: eyewitness identification: lineups.

Existing law does not regulate how law enforcement officials prepare or conduct eyewitness photo or live lineup identifications.

This bill declares legislative intent ~~to require that~~ law enforcement ~~to adopt~~ *officials study and consider adoption of* policies and procedures regulating eyewitness lineup identifications so as to ensure a decrease in the number of misidentifications.

This bill would require the Department of Justice and the Commission on Peace Officer Standards and Training to develop guidelines in conjunction with ~~all~~ *local* law enforcement agencies, prosecutors, ~~and~~ defense attorneys, *and other legal experts*, as

specified, in order to ensure the reliability of eyewitness photo and live identifications, as specified.

Existing law allows opinion testimony from expert witnesses to be admitted at trial upon specified showings.

This bill would allow expert testimony regarding the reliability of an eyewitness identification to be admitted at trial if ~~the defendant makes a specified showing~~ *proponent of the evidence establishes relevancy and proper qualifications of the witness.*

Because this bill requires local agencies to adopt new ~~regulations and to train their employees regarding the regulations~~ *guidelines*, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 806 is added to the Evidence Code, to  
2 read:

3 806. Consistent with existing law, expert testimony ~~is~~  
4 ~~admissible~~ *may be admitted* regarding factors that affect the  
5 reliability of ~~eyewitness identifications if, upon a showing by the~~  
6 ~~defendant, the factors are present in the case before the court.~~  
7 *eyewitness identification if the proponent of the evidence*  
8 *establishes relevancy and proper qualifications of the witness.*

9 SEC. 2. Section 686.3 is added to the Penal Code, to read:

10 686.3. (a) The goal of a law enforcement criminal  
11 investigation is to find and apprehend the person or persons  
12 responsible for committing a crime.

13 (b) A comprehensive body of peer-reviewed studies of  
14 eyewitness identification procedures indicate that the criminal  
15 justice system can improve the accuracy of eyewitness

1 identifications by implementing changes to identification  
2 procedures.

3 (c) Improving the accuracy of eyewitness identifications will  
4 increase public trust in the criminal justice system, ~~which, in~~  
5 ~~turn, will increase the ability of law enforcement and prosecutors~~  
6 ~~to convict the guilty and protect our communities.~~

7 (d) Policies and procedures such as those recommended by the  
8 National Institute of Justice and the California Commission on  
9 the Fair Administration of Justice are readily available and have  
10 proven effective in other jurisdictions.

11 (e) It is the intent of the Legislature that law enforcement  
12 ~~officials adopt new~~ *adopt study and consider adoption of new*  
13 policies and procedures similar to those recommended by the  
14 National Institute of Justice and the California Commission on  
15 the Fair Administration of Justice in order to ensure that  
16 eyewitness identification procedures in California minimize the  
17 chance of misidentification of a suspect.

18 (f) On or before July 1, 2007, the Department of Justice, and  
19 the Commission on Peace Officers Standards and Training, in  
20 conjunction with local law enforcement agencies, prosecutors,  
21 ~~and defense attorneys~~ *defense attorneys, and other legal experts,*  
22 including representatives of the California District Attorneys  
23 Association, *the Los Angeles District Attorney*, the California  
24 Public Defenders Association and the California Attorneys for  
25 Criminal Justice, shall develop guidelines for policies and  
26 procedures with respect to collection and handling of eyewitness  
27 evidence in criminal investigations by all law enforcement  
28 agencies operating in California. These guidelines shall be  
29 developed to ensure reliable and accurate suspect identifications  
30 and shall be consistent with the *reliable evidence supporting best*  
31 *practices, including consideration of the* recommendations of the  
32 California Commission on the Fair Administration of Justice. All  
33 law enforcement agencies shall adopt the guidelines by  
34 December 31, 2007.

35 SEC. 3. If the Commission on State Mandates determines  
36 that this act contains costs mandated by the state, reimbursement  
37 to local agencies and school districts for those costs shall be

- 1 made pursuant to Part 7 (commencing with Section 17500) of
- 2 Division 4 of Title 2 of the Government Code.

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